

## Message Text

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44

ACTION IO-06

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-03 H-02

INR-07 L-02 NSAE-00 NSC-05 PA-02 RSC-01 PRS-01 SP-02

SS-20 USIA-15 OIC-02 CAB-05 COME-00 DOTE-00 EB-06

FAA-00 AF-10 ARA-10 EA-10 NEA-10 DRC-01 SCCT-01 SCA-01

JUSE-00 /135 W

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FM AMCONSUL MONTREAL

TO SECSTATE WASHDC PRIORITY 5471

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E. O. 11652: N/A

TAGS: ETRN

SUBJ: REPORT ON ICAO LEGAL COMMITTEE, 21ST SESSION

1. AT NOON OF 7TH SESSION COMMITTEE HAD COMPLETED DISCUSSIONS OF THE REVISION OF THE SYSTEM OF LIABILITY FOR THE WARSAW CONVENTION. FOLLOWING DECISIONS ON PRINCIPLE WERE TAKEN:

A. THE DEFENSE OF THE UNLAWFUL SEIZURE OF AIRCRAFT (HAGUE CONVENTION) WAS REJECTED BY VOTE 21 AGAINST (US), 12 IN FAVOR, WITH 12 ABSTENTIONS.

B. DEFENSE OF UNLAWFUL ACTS AGAINST AIRCRAFT (MONTREAL CONVENTION) REJECTED 21 AGAINST (US), 11 IN FAVOR, WITH 11 ABSTENTIONS.

C. DEFENSE OF FORCE MAJEURE REJECTED 21 AGAINST (US), 7 IN FAVOR, WITH 12 ABSTENTIONS.

D. DEFENSE OF STRIKES AND CIVIL COMMOTION WAS REJECTED WITHOUT COMMENT.

2. WITH RESPECT TO BURDEN OF PROOF PROPOSALS ADOPTED WERE:

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A. THE BURDEN OF PROOF WAS ON THE CARRIER TO ESTABLISH DEFENSES  
41 IN FAVOR (US), 0 (ZERO) AGAINST WITH 6 ABSTENTIONS.

B. IF THE CARRIER IS AT FAULT HE WILL NOT BE ABLE TO USE  
THE DEFENSES. THE BURDEN OF PROOF TO ESTABLISH THIS FAULT IS  
UPON THE CARRIER. 21 IN FAVOR, 11 AGAINST (US), WITH 11 ABST-  
ENTIONS.

3. ARTICLE 21. PROPOSAL TO DELETE PARAGRAPH 3 CARRIED BY 17  
IN FAVOR (US), 14 AGAINST, WITH 8 ABSTENTIONS. THUS, THE CARRIER  
CAN NOW DEFEND ONLY AGAINST THE ACTS OF THE CARRIER IN THE  
INITIAL ACT AND WOULD HAVE A RIGHT OF SUBROGATION AGAINST  
ANY OTHER PARTY IF IT COULD BE ESTABLISHED.

4. BREAKABILITY.

A. THE COMMITTEE DECIDED TO DELETE ARTICLE 9 BY VOTING THAT  
THERE SHALL BE NO SANCTION WHICH SHOULD LEAD TO AN ABSENCE OF  
A CEILING. THE VOTE WAS 25 (US) IN FAVOR, 14 AGAINST, WITH 6  
ABSTENTIONS.

B. ARTICLE 25. IT WAS DETERMINED THAT THERE SHOULD BE NO BREAK-  
ABILITY FOR DELAY. THE VOTE WAS 33 - 0 - 7 ABSTENTIONS.

5. THE COMMITTEE VOTED TO ADOPT A SYSTEM OF STRICT LIABILITY.  
THE VOTE WAS 25 IN FAVOR (US), 10 AGAINST (UK, NORWAY, SWEDEN,  
USSR, EASTERN EUROPEANS), 4 ABSTENTIONS.

6. THE AMOUNT OF LIABILITY IS LEFT OPEN FOR THE DIPLOMATIC  
CONFERENCE.

7. THE US PROPOSAL ON THE METHOD OF COMPUTATION OF LIABILITY  
(PACKAGE VS SHIPMENT) WAS REJECTED BY 33 AGAINST, 2 IN FAVOR  
(US, JAPAN), AND 9 ABSTENTIONS.

8. THE DISCUSSIONS OF THE GOLD PROBLEM IS PENDING. FRANCE  
AND 3 OTHER DELEGATIONS ARE TO DRAFT A RESOLUTION OF INTERPRE-  
TATION THAT THE OFFICIAL RATE OF GOLD WAS WHAT WAS INTENDED AT  
THE NEGOTIATIONS OF THE WARSAW CONVENTION, THE HAGUE PROTOCOL  
AND THE GUATEMALA PROTOCOL.

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9. DELAY. DELAY AS A DEFENSE WAS ADOPTED BY 43 IN FAVOR (US),  
0 (ZERO) AGAINST WITH 1 ABSTENTION. BREAKABILITY FOR DELAY  
WAS ADOPTED BY 33 IN FAVOR, 0 (ZERO) AGAINST WITH 7 ABSTENTIONS  
(US).

10. US PAPER ON INTERMODAL TRANSPORTATION WAS DISCUSSED. ALL  
COMMENTS INDICATED STRONG OBJECTION TO DISCUSSING THE SUBJECT IN

LIGHT OF THE UNCTAD STUDY PRESENTLY UNDERWAY AND COMPLEXITY OF THE SUBJECT. THE SECRETARIAT IS TO SUBMIT A PAPER TO THE DIPLOMATIC CONFERENCE ON THE RESULTS OF THE WORK OF UNCTAD.

11. THE USSR PROPOSAL TO AMEND ARTICLE 26 TO LIMIT THE PERIOD FOR PRESENTATION OF A CLAIM FOR TOTAL LOSS WAS REJECTED BY 22 AGAINST (US), 18 IN FAVOR, AND 6 ABSTENTIONS.

12. THE UK PROPOSAL ON AIRMAIL WAS ADOPTED IN PRINCIPLE, SUBJECT TO DRAFTING, BY 41 IN FAVOR, 0 (ZERO) AGAINST AND 1 ABSTENTION (US).

13. AN IATA PROPOSAL TO LIMIT THE CARRIER LIABILITY WITH RESPECT TO CARRIAGE OF NUCLEAR MATERIAL WAS NOT ADOPTED WITHOUT VOTE. THE SECRETARIAT IS TO PRESENT A PAPER ON THE SUBJECT TO THE DIPLOMATIC CONFERENCE.  
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